

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SEIU HEALTHCARE 1199NW, a
labor organization,

11 Plaintiff,

12 v.

13 COMMUNITY PSYCHIATRIC
14 CLINIC,

15 Defendant.
16

CASE NO. C19-1210 MJP

ORDER DENYING MOTION FOR
A TEMPORARY RESTRAINING
ORDER

17 THIS MATTER comes before the Court on Plaintiff's Motion for a Temporary
18 Restraining Order and Order to Show Cause why a Preliminary Injunction Should Not Issue.
19 (Dkt. No. 2.) Having reviewed Plaintiff's Motion, the Response (Dkt. No. 8), and all related
20 papers, the Court DENIES the Motion.

21 **Background**

22 Plaintiff, SEIU Healthcare 1199NW (the "Union"), which represents over 200 current
23 employees of Defendant, Community Psychiatric Clinic ("CPC"), seeks to enjoin Defendant
24

1 from merging with Sound, another mental healthcare provider. (Dkt. No. 3, Declaration of Jason
2 Beauchene (“Beauchene Decl.”), ¶¶ 4, 6.) Plaintiff contends the sale to Sound violates the
3 Parties’ collective bargaining agreement (“CBA”), which controls the wages, hours, and other
4 terms and conditions of employment at CPC. (Id. ¶ 5, Ex. A.) Without an injunction, Sound will
5 assume Defendant’s assets and liabilities at the end of this month. (Id. ¶ 6; Dkt. No. 10,
6 Declaration of Bruce Smith (“Smith Decl.”), ¶ 5, Ex. 1.)

7 From January 2018 through March 11, 2019 the Parties were in negotiations regarding
8 the current iteration of their CBA. (Id. ¶ 13.) On March 11, the Parties achieved a
9 recommended settlement agreement, with the new contract including a provision for addressing
10 employee issues in the event of a merger or sale of CPC. (Id. ¶ 14.) The Union signed the CBA
11 on April 25, 2019, but Defendant contends the Union did not deliver a copy of the agreement
12 that was signed by the Union until July 10, 2019. (Beauchene Decl., Ex. A at 27; Smith Decl.
13 ¶ 15.) The CBA was “effective [on the] date of signing.” (Beauchene Decl., Ex. A at 26.)

14 On March 20, 2019, Defendant entered into a letter of intent with Sound, beginning the
15 process of negotiating a potential sale. (Beauchene Decl. ¶ 6; Smith Decl. ¶ 5, Ex. 1.) During
16 the negotiations that followed, Defendant claims that it described the CBA to Sound and
17 requested that Sound continue employment for former CPC employees on the same or similar
18 terms as those employees had with CPC. (Smith Decl. ¶¶ 6-7.) On April 15, 2019, CPC and
19 Sound signed an Asset Transfer Agreement. (Id. ¶ 8.) According to Defendant, due to
20 regulatory, funding, and staffing challenges, without the sale to Sound, it will be “almost
21 impossible” for CPC to remain open after August 31. (Smith Decl. ¶¶ 31-35.)

22 Two days after signing the agreement with Sound, Defendant’s Chief Executive Officer,
23 Douglas Crandall, emailed all CPC employees and texted a Union representative to announce
24

1 that CPC and Sound would merge. (Beauchene Decl. ¶ 7; Dkt. No. 9, Declaration of Matthew
2 W. Lynch (“Lynch Decl.”), ¶ 3, Ex. 1.) CPC employees began receiving letters in mid-June that
3 their employment with CPC would end on August 31, 2019. (Beauchene Decl. ¶ 15.)
4 Approximately 15 current CPC employees were not offered employment with Sound; these
5 employees are not the least senior in their program, pay grade, or specialty. (Beauchene Decl. at
6 ¶ 16; see Dkt. No. 14.) Several of these employees have submitted declarations describing their
7 concerns about finding future employment and their ability to obtain medical care when their
8 employment ends. (See Dkt. No. 3, Ex. K, Declaration of Belinda Allender (“Allender Decl.”),
9 ¶¶ 4-7; Ex. L, Declaration of Chris Dyson (“Dyson Decl.”), ¶¶ 2, 4; Ex. M, Declaration of
10 Kirsten Staszak (“Staszak Decl.”), ¶¶ 2-5; Ex. O, Declaration of Dendrie Lynn Plodzrein
11 (“Plodzrein Decl.”), ¶¶ 2-4, 6.)

12 For those CPC employees who have received offers from Sound, the terms and
13 conditions of their employment will change. (Beauchene Decl. ¶ 17.) For example, they will no
14 longer have a clause that permits Sound to terminate them only for “just cause,” and will have a
15 new high-deductible health insurance plan where the current CPC plan is low-deductible. (Id.)
16 For at least one employee, the new health insurance plan means she will be unable to afford her
17 current medications. (Id., Ex. N, Declaration of Abigail Minor (“Minor Decl.”), ¶¶ 3-6.) These
18 employees will also forfeit any accrued sick leave over 120 hours, may lose accrued vacation
19 hours, and will be required to undergo background checks. (Beauchene Decl. ¶¶ 18-20.)

20 On April 30, 2019, the Union requested information about the partnership between CPC
21 and Sound. (Beauchene Decl. at ¶ 9, Ex. C.) In response, Defendant provided the Letter of
22 Intent, the Asset Transfer Agreement, and a flash drive with copies of service delivery contracts
23 and other documents but did not provide information regarding the terms and conditions of
24

1 employment for those CPC employees who received offers with Sound. (Id.; Smith Decl.
2 ¶¶ 18-19, Ex. 7.) In accordance with the CBA’s four-step grievance procedure, Plaintiff filed a
3 grievance on June 5, 2019, complaining that the successorship provision of the CBA had been
4 violated and the notice period was insufficient; the parties held a grievance meeting on June 20,
5 2019. (Beauchene Decl. ¶ 12, Ex. D; Smith Decl. ¶ 19.) Although not provided for in the CBA,
6 Plaintiff requested that the Parties enter expedited arbitration. (Id.; Ex. A.) On August 1, having
7 received no response, Plaintiff again requested expedited arbitration and an agreement that
8 Defendant delay the asset transfer until completion of arbitration. (Id.) The Parties have now
9 reached Step Three of the grievance process, the final step before arbitration. (Id. at ¶ 29; see
10 Dkt. No. 14.)

11 Discussion

12 I. Legal Standard

13 The Norris–LaGuardia Act, 29 U.S.C. §§ 101, et seq., generally limits a district court’s
14 power to issue injunctions in disputes between a union and an employer. In Boys Markets, Inc.
15 v. Retail Clerks Union, Local 770, the Supreme Court recognized an exception to the Act’s
16 anti-injunction provisions and allowed equitable relief to prevent a union from going on strike
17 over a dispute that was subject to a binding arbitration process. 398 U.S. 235, 253 (1970)
18 (injunctive relief can support the central purpose of the Norris–LaGuardia Act when it “merely
19 enforces the obligation that the union freely undertook under a specifically enforceable
20 agreement to submit disputes to arbitration”); see also Buffalo Forge Co. v. United Steelworkers
21 of America, 428 U.S. 397, 407, (1976) (“The driving force behind Boys Markets was to
22 implement the strong congressional preference for the private dispute settlement mechanisms
23 agreed upon by the parties.”).

1 Courts have also found injunctive relief to be appropriate in so-called “reverse Boys
2 Markets” instances where “an employer makes changes in areas which are subject to the
3 grievance-arbitration procedure, and the union seeks to enjoin the employer from making the
4 changes until the grievance is resolved through arbitration.” Newspaper & Periodical Drivers’ &
5 Helpers’ Union, Local 921 v. San Francisco Newspaper Agency, 89 F.3d 629, 632 (9th Cir.
6 1996).

7 Under the reverse Boys Markets exception, courts have found injunctive relief available
8 where:

9 (1) the collective bargaining agreement contains a mandatory arbitration provision; (2)
10 the underlying dispute is arbitrable; (3) the party seeking arbitration is prepared to
11 arbitrate; and (4) issuance of an injunction would be warranted under ordinary principles
12 of equity-whether breaches are occurring and will continue, or have been threatened and
will be committed; whether the breaches have caused or will cause irreparable injury to
the Union; and whether the Union will suffer more from the denial of an injunction than
will the Employer from its issuance.

13 Id. at 632.

14 Because the Parties here do not contest that the first three factors are met (Dkt. No. 2 at
15 14; see generally Dkt. No. 8), the only issue before the Court is whether an injunction would be
16 warranted under the ordinary principles of equity outlined above.

17 **A. Breach of Contract**

18 Plaintiff contends it is entitled to injunctive relief to preserve the status quo pending
19 arbitration because Defendant has violated the transparency and seniority provisions of the CBA.
20 A plaintiff ““seeking to maintain the status quo pending arbitration pursuant to the principles of
21 Boys Markets need only establish that the position he will espouse in arbitration is sufficiently
22 sound to prevent the arbitration from being a futile endeavor.”” San Francisco Newspaper
23 Agency, 89 F.3d at 632 (quoting Amalgamated Transit Union v. Greyhound Lines, Inc., 529
24

1 F.2d 1073 (9th Cir. 1976) (“Greyhound I”), vacated and remanded, 429 U.S. 807, 97 (1976),
2 reversed on remand, 550 F.2d 1237 (9th Cir.) (“Greyhound II”), cert. denied, 434 U.S. 837
3 (1977). For the reasons discussed below, Plaintiff has not met this burden.

4 Plaintiff first alleges that Defendant violated the good faith and transparency
5 requirements enumerated under Section 24.3 of the CBA. Under that provision, the Parties are
6 required to use good faith efforts to “maintain transparency and timely communication
7 throughout the process to minimize the potential adverse impacts.” (Beauchene Decl., Ex. A at
8 26.) “In particular, the parties will use good faith efforts to adhere to the following guidelines”:

- 9 (1) Inform represented employees of any potential sale or transfer at least 120 days in
10 advance;
- 11 (2) Meet with the Union to discuss any potential sale or transfer that will impact
12 employees;
- 13 (3) Inform the potential buyer of the existence of this agreement and encourage the buyer
14 to adopt similar conditions in the interest of preserving a high quality workforce; and
- 15 (4) Make every effort to sell to an entity “that will preserve the organizational mission
16 and values of the Employer”;
- 17 (5) “None of the above shall constitute encumbrances or restrictions on negotiations with
18 a potential buyer, or any final sale or transfer.”

19 (Id.)

20 Plaintiff has failed to demonstrate that Defendant violated either the specific provisions
21 of Section 24.3 or what Plaintiff describes as a separate requirement that the Parties act with
22 transparency and good faith. (Dkt. No. 2 at 22.) First, contrary to Plaintiff’s allegations (Dkt.
23 No. 2 at 11), the only evidence in the record shows that Defendant informed employees and a
24 Union representative of the impending asset sale on April 17, 2019, 136 days in advance of the
closing date. (Dkt. No. 8 at 12; Smith Decl. ¶ 16, Ex. 3; Dkt. No. 9, Declaration of Matthew W.
Lynch (“Lynch Decl.”), ¶ 3, Ex. 1.) Plaintiff also alleges that Defendant violated subsection

1 three by failing to inform Sound of the existence of the CBA and failing to encourage Sound to
2 adopt similar conditions in the interest of preserving a high-quality workforce. (Dkt. No. 2 at
3 11-12.) But Defendant has submitted evidence that it discussed the CBA in several meetings
4 with Sound and requested Sound continue employment for former CPC employees on the same
5 or similar terms. (Smith Decl. ¶¶ 5-7, Ex. 1.)

6 While Defendant complied with the explicit terms of Section 24.3, Plaintiff also claims
7 Defendant violated additional unenumerated requirements when it waited to provide the Letter of
8 Intent and Asset Transfer Agreement until May 24, 2019 and did not provide the Union with
9 requested information regarding the impact of the sale on Union-represented employees. (Dkt.
10 No. 2 at 11.) But Defendant met with the Union on five occasions to discuss the sale and
11 initiated these discussions itself when the Union failed to do so. (Dkt. No. 8 at 12-13; Smith
12 Decl. ¶¶ 20, 23-25, 28.) Where Defendant met its enumerated obligations under Section 24.3,
13 and demonstrated significant efforts to communicate with the Union, the Court declines to find
14 that Defendant had additional, unspecified obligations to be more transparent, especially in light
15 of the clear edict that none of the provisions of Section 24.3 “shall constitute encumbrances or
16 restrictions on negotiations with a potential buyer, or any final sale or transfer.” (Beauchene
17 Decl., Ex. A at 26.) The Court cannot ignore the terms the Parties have explicitly negotiated,
18 especially when Plaintiff agreed to those terms after learning about the sale to Sound.
19 (Beauchene Decl. ¶ 7, Ex. A at 26-27; Lynch Decl., ¶ 3, Ex. 1.) Based on the briefing and the
20 evidence in the record, the Court finds that Plaintiff’s Section 24.3 arguments are insufficiently
21 sound to render arbitration on these points more than a futile endeavor.

22 Plaintiff also fails to demonstrate its arguments regarding the seniority provision of the
23 CBA are sufficiently sound. The seniority provision mandates that in the event of layoff, partial
24

1 layoff, or hours reduction, “seniority shall prevail amongst regular employees except where there
2 are substantial considerations as to qualifications of the employees for the available work.” (Dkt.
3 No. 2 at 12; Beauchene Decl., Ex. A at 15.) But, as Defendant argues, the seniority provision
4 does not apply here because all CPC employees will be dismissed on August 31, 2019, when
5 Sound absorbs CPC; the seniority provision—which allows those with seniority to remain
6 employed—cannot apply to an organization that will no longer exist. (Dkt. No. 8 at 14; Dkt. No.
7 1, ¶ 41.)

8 **B. Irreparable Injury**

9 Plaintiff contends the employees here face irreparable harm that could not be remedied in
10 arbitration if the August 31, 2019 sale occurs. (Dkt. No. 2 at 15.) A union is entitled to a status
11 quo injunction pending arbitration “only if any arbitral award in favor of the union would
12 substantially fail to undo the harm occasioned by the lack of a status quo injunction. . . .” San
13 Francisco Newspaper Agency, 89 F.3d at 634. This standard is akin to the usual requirement
14 that the movant must establish irreparable harm. Id.

15 The potential harms in this case include the loss of employment without possibility of
16 reinstatement, loss of medical benefits resulting in foregone care, and other harms including
17 potential homelessness. (Dkt. No. 2 at 15.) Defendant contends that any injury to employees at
18 this point is merely speculative, or constitutes common harms experienced by most discharged
19 employees, which do not support a finding of irreparable injury. (Dkt. No. 8 at 16-17.) But
20 “[p]ermanent loss of employment which an arbitrator cannot reverse clearly constitutes
21 irreparable injury and a frustration of arbitration.” Graphic Commc’ns Conference—Int’l Bhd.
22 of Teamsters Local 404M v. Bakersfield Californian, 541 F. Supp. 2d 1117, 1124 (E.D. Cal.
23 2008); see also Local Lodge No. 1266, Int’l Ass’n of Machinists & Aerospace Workers, AFL-
24

1 CIO v. Panoramic Corp., 668 F.2d 276, 286 (7th Cir. 1981). The same is true for losing
2 necessary health care coverage, see United Auto., Aerospace & Agr. Implement Workers of
3 Am., Amalgamated Local 645, AFL-CIO v. Gen. Motors Assembly Div., No. 82-5530, 1982 WL
4 2028, at *2 (C.D. Cal. Oct. 29, 1982); Risteen v. Youth For Understanding, Inc., 245 F. Supp. 2d
5 1, 16 (D.D.C. 2002), especially where, as here, Plaintiff presents evidence that several employees
6 will be unable to afford care for their ongoing, serious medical conditions. (See Minor Decl., ¶¶
7 3-6; Allender Decl., ¶ 11.)

8 Defendant also argues that Plaintiff's delay in seeking injunctive relief—Union members
9 knew of the sale in April, yet Plaintiff did not seek an injunction until August—is inconsistent
10 with Plaintiff's insistence that it faces irreparable harm. (Dkt. No. 8 at 13.) This argument is
11 compelling, see Valeo Intellectual Prop., Inc. v. Data Depth Corp., 368 F. Supp. 2d 1121, 1128
12 (W.D. Wash. 2005) (citing Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc., 762 F.2d 1374,
13 1377 (9th Cir.1985)), but does not overcome the evidence demonstrating the irreparable injuries
14 that several employees will experience if they lose their employment and healthcare.

15 The Court finds that Plaintiff has sufficiently established irreparable harm that cannot be
16 undone by an arbitral award.

17 **C. Balance of the Equities**

18 Plaintiff argues that the equities tip in the Union's favor because an injunction preventing
19 employees from facing unemployment with no possibility of reinstatement, possible
20 homelessness, and the loss of necessary medical care "must be in the public interest." (Dkt. No.
21 2 at 23.) Defendant counters that if the Court enjoins the sale, approximately 200 CPC
22 employees risk unemployment, compared to the 15 or so employees who were not offered
23 employment by Sound. (Dkt. No. 8 at 18; see Dkt. No. 14.) Further, enjoining the sale will
24

1 affect thousands of clients with behavioral, health, and chemical dependency issues because CPC
2 will be unable to effectively manage and continue operations and services after August 31, 2019.
3 (Dkt. No. 8 at 18; Smith Decl. ¶¶ 31-35.) Given the number of employees who would lose
4 employment if CPC closes and the thousands of patients who would lose care, and without
5 countervailing evidence to suggest the CPC is likely to remain open beyond the August 31, 2019
6 sale, the Court finds that the balance of the equities tips strongly in Defendant's favor.

7 **Conclusion**

8 Because Plaintiff has failed to establish the position it would take in arbitration is
9 sufficiently sound as there is no indication that Defendant violated the CBA and because the
10 balance of the equities favors Defendant, Plaintiff's Motion is DENIED.

11
12 The clerk is ordered to provide copies of this order to all counsel.

13 Dated August 12, 2019.

14
15 

16 Marsha J. Pechman
17 United States District Judge
18
19
20
21
22
23
24